85-1408

No.

Supreme Court, U.S.
FILED
FEB 21 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

LOCAL 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
Petitioner,

v.

ROBERT J. MCGINNIS, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MARVIN GITTLER
ASHER, PAVALON, GITTLER & GREENFIELD, LTD.
Two North LaSalle Street
Suite 1200
Chicago, Illinois 60602
(312) 263-1500

GEORGE KAUFMANN
(Counsel of Record)
DICKSTEIN, SHAPIRO & MORIN
2101 L Street, N.W.
Washington, D.C. 20037
(202) 296-1294
Attorneys for Petitioner

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

60

5PP

QUESTIONS PRESENTED *

This case involves § 101(a)(1) of the Labor Management Reporting and Disclosure Act of 1959 which provides: "Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the businesss of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws." The questions presented are:

1. Does § 101(a)(1) authorize the courts to invalidate a union rule because of its unequally adverse *effects* on some members with respect to attendance and voting at meetings, although the rule is neutral on its face and is uniformly enforced?

2. May a Court of Appeals determine on the basis of a "balancing" test that a union rule is not "reasonable" although the rule is "rationally related to a legitimate and protected union purpose", and thereby satisfies the standard of reasonableness established in *Steelworkers* v. *Sadlowski*, 457 U.S. 102, 121 (1982)?

---

* The parties in the court below were Robert J. McGinnis, Joseph Kouba, P. James Wardell and Jackie Pressley, Plaintiffs-Appellants and Local Union 710, International Brotherhood of Teamsters, Defendant-Appellee.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES IN THE COURT BELOW	i
OPINIONS BELOW	1
JURISDICTION	1
STATUTE INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	6
I. The Court of Appeals' Expansion of § 101(a)(1) to Reach the "Practical Effects" of Union Rules Which Are Facially Neutral and Evenly Applied Is Contrary to *Calhoon* v. *Harvey*, 379 U.S. 134 (1964), and Invites Essentially Standardless Judicial Decisions Which Congress Did Not Authorize	6
II. The Court of Appeals' Adoption of a Balancing Test to Determine Whether a Union Rule Is "Reasonable", and Therefore Lawful Under § 101(a)(1), Is Contrary to *Steelworkers* v. *Sadlowski*, 457 U.S. 102 (1982)	15
CONCLUSION	18
Appendix A (Opinion of the Court of Appeals)	1a
Appendix B (Order of the Court of Appeals Denying Rehearing)	15a
Appendix C (Memorandum Opinion and Order of the District Court)	17a

TABLE OF AUTHORITIES

CASES Page

Alexander v. Inter. Operating Eng., AFL-CIO, 624 F.2d 1235 (5 Cir. 1980) 10, 16
Allied Stores of Ohio v. Bowers, 358 U.S. 522 (1959) 13
Alvey v. General Electric Co., 622 F.2d 1279 (7 Cir. 1980) 9
American Postal Workers v. American Postal Workers Union, 655 F.2d 1096 (D.C. Cir. 1981) .. 9
Brown v. Board of Education, 347 U.S. 483 (1954) .. 13
Bunz v. Moving Picture Mach. Operators' Union, 567 F.2d 1117 (D.C. Cir. 1977) 9
Calhoon v. Harvey, 379 U.S. 134 (1964) 3, 4, 6, 7, 8, 10, 11, 15
Doherty v. Brotherhood of Railway Airline S.S. Clerks, 618 F.2d 484 (9 Cir. 1980) 10
Fritsch v. District Council No. 9, Bro. of Painters, 493 F.2d 1061 (2 Cir. 1974) 10
Gordon v. Laborers' International Union of North America, 490 F.2d 133 (10 Cir. 1973), *cert. denied*, 419 U.S. 836 (1974) 10
Griggs v. Duke Power Co., 401 U.S. 424 (1971) 13
Gurton v. Arons, 339 F.2d 381 (2 Cir. 1964) 9, 10
Local 82, Furniture Moving Drivers v. Crowley, —— U.S. ——, 52 L.W. 4757 (June 12, 1984) 8
Molina v. Union De Trabajadores De Muelles, 762 F.2d 166 (1 Cir. 1985) 10
Morey v. Doud, 354 U.S. 457 (1957) 13
Musicians Federation v. Wittstein, 379 U.S. 171 (1964) 15
Nienaber v. Ohio Valley Carpenters Dist. Council, 652 F.2d 1284 (6 Cir. 1981) 10
Reynolds v. Sims, 377 U.S. 533 (1964) 10
Steelworkers v. Sadlowski, 457 U.S. 102 (1982) ....i, 5, 16, 17, 18
Stelling v. Intern. Bro. of Elec. Workers, Etc., 587 F.2d 1379 (9 Cir. 1978) 10
Williamson v. Lee Optical Co., 348 U.S. 483 (1955) 13
Yick Wo v. Hopkins, 118 U.S. 356 (1886) 7, 13

TABLE OF AUTHORITIES—Continued

STATUTES Page

Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*
Title VII 13

Judicial Code:

28 U.S.C. § 1254(1) 1

Labor Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. § 401 *et seq.*

§ 101(a)(1) ..... *passim*
§ 101(a)(2) 3, 4, 16
§ 101(a)(3) 15
§ 102 ..... 2, 5

MISCELLANEOUS

Hearings Before a Joint Subcommittee on Education and Labor, House of Representatives, 86th Cong., 1st Sess. on H.R. 3540 14

Hearings Before the Subcommittee on Labor of the Committee on Labor and Public Welfare, United States Senate, 86th Cong., 1st Sess. on S. 505, *et al.* 14

Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 (NLRB ed. 1959) 14, 15

Memorandum for the United States as Amicus Curiae in No. 17, Oct. T., 1964 8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

No. ———

LOCAL 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
Petitioner,

v.

ROBERT J. MCGINNIS, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at 774 F.2d 196; it is reprinted in the Appendix ("App.") hereto at pp. 1a-14a. The opinion of the District Court is not reported; it is reprinted at App. 17a-26a.

JURISDICTION

The decision of the Court of Appeals was issued on September 25, 1985. A timely petition for rehearing was denied on November 5, 1985. (App. 15a-16a.) This Court has jurisdiction under 28 U.S.C. § 1254(1). On January 21, 1986, Justice Stevens entered an order extending the time to file this petition to and including February 22,

1986. The District Court had jurisdiction under § 102 of the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 412.

STATUTE INVOLVED

This case involves § 101(a)(1), of the LMRDA, 73 Stat. 522, 29 U.S.C. § 411(a)(1), which reads as follows:

EQUAL RIGHTS.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

STATEMENT OF THE CASE

Petitioner ("Local 710" or "the Union") is a local labor organization which has its principal office at 4217 S. Halsted Street in Chicago, Illinois, where it holds its general membership meetings. Respondents are four members of Local 710.

Beginning in early 1983, respondents sought to amend Local 710's bylaws to require direct election of shop stewards at all worksites. The Union's bylaws are subject to amendment by the membership, as provided in Article 33:

> Any 10 members may propose in writing amendments to these By-Laws. The proposed amendments, unless otherwise provided herein, shall be submitted to the Local Union and read at one regular meeting and voted upon at the next regular meeting. Amendments may also be proposed, read and voted upon at a special meeting called for such purpose with advance notice to the membership of the nature of the

> amendment. Amendments approved by a two-thirds (2/3) vote of those members present and voting shall be sent to the Office of the General President for approval and shall take effect immediately upon receipt by the Local Union of such approval. [App. 2a-3a]

In accordance with Article 33, the proposed amendment was read at one regular Union meeting and voted upon at the next regular meeting (held on Sunday, April 24, 1983). Three of the respondents personally attended the latter meeting and Respondent McGinnis presented certain documents in support of the proposed bylaw amendment. The amendment was defeated as it failed to obtain approval of ". . . a two-thirds (2/3) vote of those members present and voting" as required by Article 33.

Respondents thereupon filed this action in the United States District Court for the Northern District of Illinois alleging that the Union's policy of requiring its members to attend meetings in Chicago in person to vote on amendments to Local 710's bylaws denied them their equal right to "attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings" under § 101(a)(1) of the LMRDA, and their right to free speech and assembly under § 101(a)(2).

The case came before the District Court (Nordberg, J.) on defendants' motion to dismiss (which the court treated as a motion for summary judgment) and on plaintiffs' cross-motion for summary judgment. The District Court entered judgment for the defendants. The court dismissed the § 101(a)(1) claim on the authority of *Calhoon v. Harvey*, 379 U.S. 134 (1964), which, in the District Court's words, "definitively established that all [§ 101(a)(1)] requires is that union members and classes of union members are not discriminated against in their right to vote." (App. 20a) The court observed that plaintiffs do not "allege that the disputed rules are being

applied in a discriminatory fashion as required by *Calhoon* * * * [and] have thus failed to allege a claim under [§ 101(a)(1)]." (*Id.* at 21a) The Court also dismissed plaintiffs' claim under § 101(a)(2). (*Id.*)

The Court of Appeals reversed. The court concluded, and we do not dispute, that this case "involves very large numbers of Local 710 members who are required to travel great distances to vote on proposed amendments to the Union By-Laws." (App. 5a) The court observed that Local 710 is

> composed of approximately 15,000 voting members including long-distance and local drivers, dock-hands and warehouse workers. Almost all Local 710 members live and work in a four-state area including Illinois, Wisconsin, Indiana and Iowa, although some Local 710 members live as far away as New York and Texas. [App. 4a]

The court apparently deemed it to be particularly significant (see App. 9a) that "the Union members living more than 150 miles from Chicago make up approximately eighteen percent of the Local 710 membership." (*Id.* at 4a-5a)[1]

The court construed § 101(a)(1) as forbidding "facially neutral union rules or practices which nevertheless result in disparate treatment of union members and have a discriminatory effect" and opined that *Calhoon* v. *Harvey*, 379 U.S. 134 (1964), "is in no way contrary to such an analysis." (App. 6a) Applying that construction, the court said that the "practical effect"

> of application of the Union policy is similar to the imposition of a graduated poll tax upon Union members living outside the Chicago area. The large num-

[1] The court also recited estimates and affidavits which had been presented by the plaintiffs in the District Court considering distribution of some of the members. (App. 4a)

> ber of members living more than 150 miles from Chicago are required to absorb significant transportation, lodging, and meal costs, (not to mention the loss of leisure or work time) in order to exercise their right to vote on bylaw amendments. These same costs are not imposed at all or only to a negligible degree upon members living near Chicago. [App. 9a]

The Court of Appeals recognized that "[t]he fact that a union rule or practice is discriminatory with respect to voting privileges does not end the inquiry under Title I, for the statute expressly sanctions rules and regulations in an organizations's constitution or bylaws that are reasonable and the Supreme Court has recently clarified that reasonableness is the ultimate inquiry in this area." (App. 7a, citing *Steelworkers* v. *Sadlowski*, 457 U.S. 102, 111 (1982)). But in determining whether the rule herein was "reasonable", the court did not apply the "rationally related to a legitimate and protected union purpose" standard enunciated in *Sadlowski* (see pp. 15-16, *infra*). Rather, it *balanced* between the "anti-democratic effects" of the challenged rule and the "union interests urged in its support". (App. 7a) In so balancing, the court concluded that the Union's rule was not reasonable, and that the Union should be required either to hold referendums on bylaw amendments or to conduct regional meetings of members to vote thereon. (App. 11a-14a)

The judgment of the District Court was "reversed and remanded with instructions to grant the plaintiffs' motion for summary judgment and fashion appropriate relief consistent with this opinion pursuant to the plenary discretion granted in Section 102 of the LMRDA, 29 U.S.C. § 412." (App. 14a)

REASONS FOR GRANTING THE WRIT

I. The Court of Appeals' Expansion of § 101(a)(1) to Reach the "Practical Effects" of Union Rules Which Are Facially Neutral and Evenly Applied Is Contrary to *Calhoon* v. *Harvey*, 379 U.S. 134 (1964), and Invites Essentially Standardless Judicial Decisions Which Congress Did Not Authorize.

A. It is undisputed that Article 33 of the Union bylaws, which provides for a membership vote on proposed Union bylaws at a general meeting of the members, is facially neutral, and that in applying that rule, the Union has treated all of its members equally; the Union does not forbid any member from attending or voting at such meetings. The Court of Appeals, however, held that because the "practical effects" of this union rule bear more adversely on union members who live 150 miles or more from Chicago, the rule violates § 101(a)(1) of the LMRDA, which guarantees to all members "equal rights and privileges within [the union] * * * to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings * * *." This "practical effects" test is inconsistent with this Court's construction of § 101(a)(1) in *Calhoon* v. *Harvey*, 379 U.S. 134 (1964) (hereafter "*Calhoon*").

In *Calhoon* the Court declared, after quoting the language of § 101(a)(1):

> Plainly, *this is no more than a command that members and classes of members shall not be discriminated against in their right to nominate and vote.* And Congress carefully prescribed that even this right against discrimination is "subject to reasonable rules and regulations" by the union. [379 U.S. at 139, emphasis added]

The "complaining union members" in *Calhoon* failed to state a claim under § 101(a)(1) as thus construed because they

> have not been discriminated against in any way and have been denied no privilege or right to vote or nominate which the union has granted to others. * * * It is true that they were denied their request to be candidates, but that denial was not a discrimination against their right to nominate, since the *same qualifications were required equally of all members.* [*Id.*, emphasis added.]

Like the plaintiffs in *Calhoon*, respondents here "have been denied no privilege or right" which the Union "has granted to others" with respect to attending and voting at membership meetings. Thus, under *Calhoon*, they state no cause of action under § 101(a)(1).

The Court of Appeals, however, said that the language just quoted "does not limit scrutiny under Title I to cases of facially discriminatory union rules." (App. 7a) If by this the court below had meant only that the *Calhoon* opinion permits "Title I scrutiny" not only of "facially discriminatory rules" but also of the discriminatory application of facially neutral rules, we would agree. The *Calhoon* opinion does not distinguish between these forms of discrimination, and its emphasis on equal treatment and reliance on the fact that the plaintiffs were treated the same as all other members with respect to the right to nominate shows that the Court would brook no such distinction. Cf. *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886).

However, the court below read § 101(a)(1) more broadly, to reach also the unequal "practical effects" of a rule which does not differentiate among members or classes of members and is enforced uniformly with respect to all members. The quoted analysis, which illuminates what the *Calhoon* Court meant by "discriminated against", leaves no room for the Court of Appeals' "effects" theory. Moreover, even if the Court of Appeals' interpretation could somehow be squared with what this

Court *said* in *Calhoon*, it cannot possibly be reconciled with what the *Calhoon* Court *decided*. Because the *Calhoon* plaintiffs were not eligible to be candidates, the union's challenged self-nomination requirement had an adverse effect on them which it did not have on those members who were eligible to be candidates: the plaintiffs' right to self-nomination was rendered meaningless by their ineligibility to be candidates. Notwithstanding this unmistakable and total inequality in its effect, the Court sustained the self-nomination rule.[2]

B. The court below asserted: "Courts have recognized that facially neutral union rules or practices which nevertheless result in disparate treatment of union members and have a discriminatory effect may violate Title I." (App. 6a) None of the cases cited for this proposi-

---

[2] At the Court's invitation (375 U.S. 991), a Memorandum was filed in *Calhoon* by Solicitor General Cox, who "actively participated in shaping much of the LMRDA." *Local 82, Furniture Moving Drivers* v. *Crowley*, —— U.S. ——, 52 LW 4757, 4762, n.17 (June 12, 1984). He wrote:

> All that [§ 101(a)(1)] provides, * * * is that "Every member * * * shall have *equal* rights * * * to nominate candidates" (emphasis added). It is, by its terms, simply a guarantee of nondiscrimination, of even-handedness, and does not purport to define or guarantee any particular substantive right to nominate. Its purpose is simply to assure that whatever rights to nominate are afforded by the union will be made available equally to all members. Any other interpretation would, as petitioner's brief explains (Pet. Br. 13-24), conflict with the plain words of the statute, the relationship between Titles I and IV, and the legislative history of these provisions.
>
> In this case there was plainly no discrimination against respondents in the rule denying to them the right to nominate for office persons other than themselves, for no other member of the union had any different or greater right. [Memorandum for the United States as Amicus Curiae, No. 17, Oct. T., 1964, pp. 6-7, footnote omitted]

In the accompanying footnote, the Memorandum quoted Senator Kennedy's analysis of § 101(a)(1), which is reproduced at pp. 13-14, *infra*.

tion support it. Each of the courts which found a violation of § 101(a)(1) identified a particular class which had been singled out by the union for different treatment from another class.[3] In the fourth case cited, *Gurton* v. *Arons*, 339 F.2d 371 (2 Cir. 1964), the court refused to find a violation of § 101(a)(1):

> [T]he guaranty of the equal right to vote is surely not a general commission for the federal courts to review the constitution and by-laws of the union. As long as no claim is made that provisions of the constitution and by-laws are being applied in such a way as to deny equality in voting, there is nothing in Section 101 which authorizes consideration of

---

[3] In *Alvey* v. *General Electric Co.*, 622 F.2d 1279 (7 Cir. 1980), on which the court below relied most heavily, the basis of decision was that the challenged union rule

> not only limits participation in union affairs to members in good standing but precludes a class of members—those on layoff—from fulfilling an essential prerequisite—payment of dues—to maintain their good standing. The result is that members on layoff are barred from participating in *all* union matters regardless of their willingness to pay dues or the extent to which the union matters may compromise, or as here, nearly extinguish, their rights. [622 F.2d at 1284-1285, emphasis in original.]

In other words, the union had created two classes of members—laid-off members and working members—and denied to the former group the right which the latter enjoyed with respect to voting on a matter of importance to both.

See also *Bunz* v. *Moving Picture Mach. Operators' Union*, 567 F.2d 1117, 1122 (D.C. Cir., 1977) ("the officers plainly discriminated against the minority, who opposed the assessment, and aligned themselves with the majority, for the obvious reason that the majority backed the officers' policy."); *American Postal Workers* v. *American Postal Workers*, 665 F.2d 1096, 1102 (D.C. Cir. 1981) ("The APWU has in effect created two classes of members, only one of which is entitled to ratify its collective bargaining agreements.") The pages of the *American Postal Workers* opinion (pp. 1103-1104) which are cited in the opinion below discussed only the "reasonable rules and regulations" clause of § 101(a)(1) and not the "equal rights" clause.

> those documents. Section 101 grants no power to the courts to examine into whether by-laws were lawfully adopted or repealed. See Calhoon v. Harvey, 85 S.Ct. 292 (U.S. Dec. 7, 1964); Robins v. Rarback, 325 F.2d 929 (2d Cir. 1963). [339 F.2d at 374-375]

This reasoning is wholly inconsistent with the Court of Appeals' theory herein. *Gurton*, which was decided shortly after *Calhoon*, is, not surprisingly, only the first of many lower court cases which recognize that "the issue under Section 101(a)(1) is not whether the members were treated properly or fairly, but whether they were treated equally." [4]

The Court of Appeals decisions which most directly conflict with that herein are those which have rejected the contention that a union must allow weighted voting for convention delegates; while disproportionate representation undoubtedly has the effect of creating inequality among members with respect to their right to vote (cf. *Reynolds* v. *Sims*, 377 U.S. 533 (1964)), it does not give rise to claim under § 101(a)(1). *Gordon* v. *Laborers' International Union of North America*, 490 F.2d 133 (10 Cir. 1973), *cert. denied*, 419 U.S. 836 (1974); *Fritsch* v. *District Council No. 9, Bro. of Painters*, 493 F.2d 1061, 1063-1064 (2 Cir. 1974); *Doherty* v. *Brotherhood of Railway Airline S.S. Clerks*, 618 F.2d 484 (8 Cir. 1980).

The conflict between the decision below and those of other circuits, which have correctly understood and faithfully followed *Calhoon*, is an additional reason why this Court should review the decision below.

C. Even if the decision below were not inconsistent with this Court's construction of the statutory provision

---

[4] *Alexander* v. *Intern. Operating Eng., AFL-CIO*, 624 F.2d 1235, 1240 (5 Cir. 1980). See also *e.g.*, *Stelling* v. *Intern. Bro. of Elec. Workers, Etc.*, 587 F.2d 1379, 1384-1385 (9 Cir. 1978); *Nienaber* v. *Ohio Valley Carpenters Dist. Council*, 652 F.2d 1284, 1286 (6 Cir. 1981); *Molina* v. *Union De Trabajadores De Muelles*, 762 F.2d 166, 168-169 (1 Cir. 1985).

at issue here, and with the decisions of other Courts of Appeals, it should be reviewed because of its exceptional importance. The decision transforms and expands the judicial role in suits under § 101(a)(1), opening the federal courts to a wide range of challenges which would not be entertained under previously-settled law. Moreover, the decision jeopardizes the rules of the doubtless hundreds of local unions—in the highly industrialized States within the Seventh Circuit alone—which, like petitioner, conduct union business at general membership meetings that are held at considerable distances from the residences of some of their scattered members.

The determination of whether a union rule, as written or applied, denies rights to some members which it grants to others is relatively straightforward and is unquestionably committed to the courts by §§ 101(a)(1) and 102. But once the inquiry goes further to the unequal effects of neutral rules, it is inherently standardless. Few union rules have the same effect on all members; in this they do not differ from public laws, most of which have greater or lesser impact on members of the society depending on their individual situation. Little ingenuity will be required to formulate an "equal rights" challenge to almost any union's voting, nomination and meeting participation rules under the Court of Appeals' effects test.

The gestative propensity of the Court of Appeals' rationale is illustrated by the present case. The court based its finding of inequality on the fact that the "large number of members living more than 150 miles from Chicago" are required to absorb "significant" costs to attend meetings which "are not imposed at all or only to a negligible degree upon members living near Chicago." (App. 9a) The court's only ground for concluding that the expenses due to traveling may not lawfully fall upon the members unequally is a strained comparison to a "graduated poll tax." The court did not even begin to quantify "*significant* transportation, lodging, and meal costs." (*Id.*, emphasis added); indeed, it made no find-

ings as to the amount of such costs which plaintiffs and others expended.[5] The court also failed to state whether its reference to the "large number of members" was in absolute terms (Local 710 having a large membership) or as a percentage of the total (here, 18%), let alone explain how, under either view, the number of members adversely affected bears on whether their *individual* "equal rights" have been violated.[6]

Because of these deficiencies in the Court's analysis, its opinion gives no guidance to other local unions within the Circuit (or beyond) as to whether they may lawfully vote on important union matters at general membership meetings if some of their members find it more difficult than others to attend such meetings. This uncertainty is the inevitable consequence of the Court of Appeals' construction of § 101(a)(1). The statute does not invite the courts to consider the unequal effects of rules which are facially neutral and impartially applied, and therefore provides no principled basis for a court to determine the nature and severity of the travel burden which, if it falls unequally on members who are differently situated, violates § 101(a)(1).

To be sure, the difficulty of such a task would not relieve the courts of the duty to undertake it if Congress had intended to prohibit facially neutral union rules that have unequal effects on different classes of members with respect to meeting attendance or any other activity specified in § 101(a)(1). But the notion that the 1959 Congress which enacted the LMRDA conceived that the

---

[5] By the self-contradictory parenthetical expression "(not to mention the loss of leisure or work time)" (*id.*) the court managed simultaneously to suggest that those losses were of some concern to it, and to avoid considering whether they are legally relevant.

[6] To be sure, the extent of a rule's unequal impact may bear on whether it is "reasonable" under this Court's "rationality" standard. See pp. 15-18, *infra*. However, the ameliorative effect of the "reasonable" rules proviso does not justify a reading of § 101(a)(1) which leaves the courts wholly at large in determining the initial question of whether the "equal rights" of members have been denied.

courts would utilize an "effects" test in enforcing the grant of "equal rights" under § 101(a)(1) is wholly anachronistic. Our present familiarity with antidiscrimination statutes whereunder a practice may be found to be illegal because of its adverse *effects* on a class which the statute was enacted to protect should not blind us to their relative novelty. We are aware of no such law prior to Title VII of the Civil Rights Act of 1964. See *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 431 (1971). Likewise, the paradigmatic constitutional claims under the Equal Protection Clause at the time the LMRDA was enacted, which presumably shaped Congress' perception of "equal rights", were asserted against laws which facially differentiated among classes,[7] and against the unequal enforcement of facially neutral laws.[8]

Moreover, while the clarity of the statutory language made it unnecessary for the Court to discuss the legislative history of § 101(a)(1) in *Calhoon*, that history confirms that it was not intended to have the sweep which the court below attributes to it.

In his analysis of § 101(a)(1) as it passed the Senate (and was ultimately enacted), Senator Kennedy said:

> Section 101(a)(1): Asserts the right of each member of a labor organization to be considered equally and to enjoy identical privileges within the organization to nominate candidates, vote in union elections, attend membership meetings, and participate in the deliberations of the organization. The rights protected by this subsection are circumscribed by the right of the organization to establish for it-

---

[7] *Brown* v. *Board of Education*, 347 U.S. 483 (1954), was, of course, the equal protection case which was foremost in the consciousness of the public and of Congress. The staple of equal protection litigation involved economic regulations and tax laws. See, *e.g.*, *Williamson* v. *Lee Optical Co.*, 348 U.S. 483 (1955); *Morey* v. *Doud*, 354 U.S. 457 (1957); *Allied Stores of Ohio* v. *Bowers*, 358 U.S. 522 (Feb. 1959).

[8] The classic case is *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886).

self reasonable rules in its own constitution and by-laws.[9]

Senator McClellan made plain that the guarantee of "equal rights" was intended to prohibit facially discriminatory rules such as those of the Operating Engineers Union which permitted only forty percent of its members to vote, and the actions of union officials who deliberately denied to some members the democratic rights which other members enjoyed.[10] His views are uniquely revealing because Title I of the LMRDA, and specifically § 101(a)(1), had their genesis in his S. 1137 and the "bill of rights" amendment that he offered on the floor of the Senate; he also approved the Kuchel substitute bill of rights which the Senate ultimately adopted.[11]

It is likewise evident that Senator McClellan would not have intended § 101(a)(1) to be used as a vehicle for forbidding unions from transacting important business, such as voting on bylaw amendments, at general membership meetings. His S. 1137 included, in addition to the "equal rights" provision which became part of the McClellan floor amendment, two provisions which *mandated* general meetings for the transaction of local union business: § 103(1) would have *required* local unions to hold general membership meetings no less than three

---

[9] II Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 (NLRB ed. 1959) (hereafter "Leg. Hist.") at p. 1259.

[10] Hearings Before a Joint Subcommittee of the Committee on Education and Labor, House of Representatives, 86th Cong., 1st Sess. on H.R. 3540, *et al.*, pp. 2234-2235 (testimony concerning the bill as it had passed the Senate); Hearings Before the Subcommittee on Labor of the Committee on Labor and Public Welfare, United States Senate, 86th Cong., 1st Sess. on S. 505, *et al.*, p. 726 (testimony concerning the bill of rights in his own S. 1137).

[11] The evolution of what became Title I of the LMRDA is fully detailed in *Musicians Federation* v. *Wittstein*, 379 U.S. 171, 176-179 (1964).

times each year,[12] and § 302(a)(1) provided that local union officers "shall be elected at a general membership meeting"—*a referendum or series of meetings of portions of the membership were not permitted.*[13] In *Musicians Federation* v. *Wittstein*, 379 U.S. 171, 176-179 (1964) (decided on the same day as *Calhoon*), this Court inferred that a union practice which would have been *required* under Senator McClellan's S. 1137 (weighted voting for delegates) was not forbidden by Title I as enacted. Here, the inference from S. 1137 is even more compelling, for the language of § 101(a)(1) as enacted is quite close to that proposed by Senator McClellan in S. 1137 (although it was *narrowed* by the Kuchel substitute), whereas the language of § 101(a)(3) (which was at issue in *Wittstein*) had undergone substantial revisions between S. 1137 and its final version in the LMRDA.

The legislative history thus demonstrates that the Court of Appeals' decision is contrary to the congressional intent with respect to both its expansive approach to § 101(a)(1) and the particular result reached in this case.

II. The Court of Appeals' Adoption of a Balancing Test to Determine Whether a Union Rule Is "Reasonable", and Therefore Lawful Under § 101(a)(1), Is Contrary to *Steelworkers* v. *Sadlowski*, 457 U.S. 102 (1982).

The court below acknowledged:

> The fact that a union rule or practice is discriminatory with respect to voting privileges does not end the inquiry under Title I, for the statute expressly sanctions rules and regulations in an organization's constitution or bylaws that are reasonable and the Supreme Court has recently clarified that reasonableness is the ultimate inquiry in this area. See *United*

---

[12] I Leg. Hist. 276.

[13] I Leg. Hist. 295.

> *Steelworkers of America* v. *Sadlowski*, 457 U.S. 102, 111. [App. 7a] [14]

However, in determining whether the Union's rule here is "reasonable", the court below did not follow the method of analysis prescribed in *Sadlowski* (which was not again mentioned in the court's opinion). Instead, the court adhered to a pre-*Sadlowski* precedent in the same circuit—*Alvey* v. *General Electric Co.*, 622 F.2d 1279 (7 Cir. 1980)—which

> scrutinized for reasonableness in terms of "a balance between the 'anti-democratic effects' of the challenged rule and the '[union] interests urged in its support.'" 622 F.2d at 1284 (quoting *United Steelworkers of America* v. *Usery*, 429 U.S. 305, 310). [App. 7a]

The Court of Appeals' balancing test is in square conflict with the test for reasonableness enunciated by this Court in *Steelworkers* v. *Sadlowski*. The Court there held that

> USWA's rule prohibiting candidates for union office from accepting campaign contributions from nonmembers does not violate § 101(a)(2). Although it may interfere with rights Congress intended to protect, *it is rationally related to a legitimate and protected purpose, and thus is sheltered by the proviso to § 101(a)(2)*. [457 U.S. at 121, emphasis added.]

See also 457 U.S. at 112.

---

[14] The "reasonable rules and regulations" exceptions to §§ 101(a)(1) and 101(a)(2) came into the bill at the same time, as part of the Kuchel substitute for the McClellan bill of rights amendment. These changes were in harmony with the general tenor of the substitute to provide a bill of rights in "clear, unmistakable, reasonable, and just terms." (II Leg. Hist. 1229, Sen. Kuchel.) Accordingly, the court below correctly recognized that *Sadlowski* is directly on point; its error, as we develop in the text, was that it adopted a standard of "reasonableness" different from that which *Sadlowski* has established.

This Court's "rational relationship" test is significantly less stringent because it looks only to the rationality of the union's justification for its rule, whereas the Court of Appeals requires that that justification be weighed against the democratic rights which are affected. Compare the analysis in *Sadlowski*, 457 U.S. at 115-119, with that of the court below at App. 11a-14a.

The court below did not determine that the justifications presented by Local 710 were not "rationally related to a legitimate and protected [union] purpose." On the contrary, the court acknowledged that "the administrative burden of providing procedures to guarantee equality of voting certainly is a relevant consideration in this context." (App. 11a) However, it considered that the burden of a mail ballot would not be "overwhelming", and that the union had made no showing of a cost burden with respect to regional meetings. The court also recognized that "the Union certainly has a legitimate interest in promoting face-to-face discussion of issues via an in-person, central location voting requirement," but it opined that "this interest is equally promoted by regional meetings." (App. 12a).[15] This is manifestly incorrect, and at the very least

---

[15] It is noteworthy that in discounting the financial burden which its decision would create, the court suggested that the union adopt a "rule limiting consideration of bylaw amendments to one meeting per year" as provided by other Teamster locals. While such a rule doubtless would be reasonable and valid, Local 710 has chosen to make it very easy for the members to propose amendments to the constitution and to have a prompt decision on such proposals; for a court to subordinate that democratic interest is quite unjustified even under a balancing test.

[16] The court below seemingly misunderstood the nature of the regional meetings which have been and continue to be held by Local 710. The uncontradicted record evidence is that these regional meetings are for informational purposes "to discuss with employees any problems they may have and how the union may be of assistance"; they "are not monthly union meetings, and no votes on overall union matters have ever been conducted at these regional meetings." (Affidavit of Robert Falco.)

the members of Local 710 could rationally determine that it is incorrect.[16] When a particular amendment proposal is especially favored, or opposed, by one group of members, it is important for the decisionmaking process that they meet face-to-face in discussion with those who have the contrary view, and that all the members who will vote will have the benefit of that discussion.

In sum, the decision of the Court of Appeals that the Union rule here is not "reasonable" and may therefore be invalidated under § 101(a)(1) is manifestly contrary to this Court's holding in *Sadlowski* and revives a frequently recurring issue in Title I litigation that *Sadlowski* had laid to rest. That decision should therefore be reviewed by this Court and reversed.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

MARVIN GITTLER
ASHER, PAVALON, GITTLER & GREENFIELD, LTD.
Two North LaSalle Street
Suite 1200
Chicago, Illinois 60602
(312) 263-1500

GEORGE KAUFMANN
(Counsel of Record)
DICKSTEIN, SHAPIRO & MORIN
2101 L Street, N.W.
Washington, D.C. 20037
(202) 296-1294

Attorneys for Petitioner

APPENDICES

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 84-2723

ROBERT J. MCGINNIS, *et al.*,
Plaintiffs-Appellants,

v.

LOCAL UNION 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, a labor organization,
Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division
No. 83-C-8623—John A. Nordberg, *Judge*

ARGUED MAY 23, 1985—DECIDED SEPTEMBER 25, 1985

Before CUMMINGS, *Chief Judge*, WOOD, *Circuit Judge* and WYATT, *Senior District Judge.**

CUMMINGS, *Chief Judge.* This action seeks an order requiring Local 710, International Brotherhood of Teamsters ("Local 710" or "the Union") to provide its remotely situated members with regional meetings or mail ballots for voting on amendments to the bylaws of the Union. Plaintiffs, four members of Local 710, assert that the Union's policy of requiring its members to attend

---

* The Honorable Inzer B. Wyatt, Senior District Judge of the Southern District of New York, is sitting by designation.

meetings in Chicago in person to vote on amendments to Local 710's "Constitution and By-Laws" (hereinafter "By-Laws") violates their rights of equal voting privileges and of free speech and assembly guaranteed under Title I, § 101(a)(1) and (2) of the Labor Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. § 411(a)(1) and (2). The district court granted defendant's motion for dismissal, construing it as a motion for summary judgment, ruling that plaintiffs complained of a purely internal union matter and had failed to state a claim under Title I of the LMRDA. For the reasons set forth below, we reverse the judgment and remand with instructions.

I.

Plaintiffs filed this action on November 29, 1983, after exhausting all internal Union remedies, pursuant to § 102 of the LMRDA, 29 U.S.C. § 412, which provides that any person whose rights secured by Title I of the Act have been infringed by a violation of Title I "may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate." The alleged violation of Title I is the Union's requirement of personal attendance at a single meeting location in Chicago to vote on proposed amendments to Local 710's By-Laws.

The action arises out of the unsuccessful attempt of certain Local 710 members to amend the Union By-Laws to require direct election of union stewards. (Complaint ¶ 10, R. Item 1). Prior to the April 24, 1983, bylaw amendment vote concerning union stewards, alternative voting procedures were requested by plaintiffs and others but these requests were denied by the Union leadership.

Article 33 of Local 710's By-Laws provides that:

> Any 10 members may propose in writing amendments to these By-Laws. The proposed amendments, unless otherwise provided herein, shall be submitted to the Local Union and read at one regular meeting

> and voted upon at the next regular meeting. Amendments may also be proposed, read and voted upon at a special meeting called for such purpose with advance notice to the membership of the nature of the amendment. Amendments approved by a two-thirds (⅔) vote of those members present and voting shall be sent to the Office of the General President for approval and shall take effect immediately upon receipt by the Local Union of such approval.

Article 18, Section 1 of the By-Laws requires general membership meetings to be held monthly at a place designated by its Executive Board. Section 2 of the same Article permits special meetings to be called by the President or a majority of the Executive Board after ten percent of the members sign a petition requesting such a meeting. Regional membership meetings are expressly authorized by Article 8[*] Section 1, which states:

> The Executive Board is authorized to permit membership meetings to be held on a division, craft, place of employment or other similar basis as it shall consider appropriate considering the special needs of the organization so as to permit the membership to attend meetings and to express their views and otherwise exercise their rights as members. There shall be no limitation on the right of any member to be heard at any such separate meeting provided herein on all matters which apply to the general membership, but such member shall be permitted to vote only at such separate division, craft or place of employment meeting to which he has been assigned.

The Executive Board, pursuant to Article 18, currently holds its membership meetings, including those at which amendments to the bylaws are considered at the Union hall, located at 4217 S. Halsted Street, Chicago, Illinois. Plaintiffs do not specifically attack the Union's By-Laws, but instead challenge the practice or policy of

---

[* So in original, but should read "18"]

not permitting By-Law-sanctioned regional meetings or non-prohibited mail balloting. In light of Local 710's large geographical jurisdiction and a membership dispersed throughout that area, the Union's in-person Chicago voting requirement allegedly places an unequal and unreasonable handicap on the voting and participation rights of members living and working significant distances from Chicago.

Although the district court forbade discovery in this case and Local 710 refused to release information regarding the dispersion of its membership (R. Item 14; Def. Br. 7), plaintiffs submitted various affidavits and petitions and estimates, summarized below, concerning the location of the membership which defendant did not directly contest below or on appeal. Defendant Local 710 of the International Brotherhood of Teamsters is composed of approximately 15,000 voting members including long-distance and local drivers, dock-hands and warehouse workers. Almost all Local 710 members live and work in a four-state area including Illinois, Wisconsin, Indiana and Iowa, although some Local 710 members live as far away as New York and Texas. Plaintiffs estimate that 25 percent to 40 percent of the membership live and work more than 100 miles from the Union hall in Chicago. A petition drive directed at obtaining regional meetings or mail ballots which took place in late 1982 and early 1983 garnered signatures of 433 members who lived over 250 miles from Chicago (Pltf. Br. 11). An affidavit submitted by one plaintiff contained a summary solely of United Parcel Service employees' (and Union members') geographic dispersion and revealed that 3,100 employees live more than 100 miles from Chicago, and 1,900 members live 150 miles or more from Chicago, 390 members more than 200 miles from Chicago, and 270 members more than 250 miles from Chicago. Defendant admitted below that the Union members living more than 150 miles from Chicago make up approximately eighteen

percent of the Local 710 membership (R. Item 25 at 4; Defendant's Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment). In summary, this case involves very large members of Local 710 members who are required to travel great distances to vote on proposed amendments to the Union By-Laws. The district court based its grant of summary judgment for defendant on plaintiffs' failure to demonstrate that the Union's policy in question has been applied in a discriminatory fashion (district court opinion at 4-5; R. Item 29). The court also denied plaintiffs' motion for summary judgment.

II.

Section 101(a)(1) of the LRMDA guarantees in pertinent part that "Every member of a labor organization shall have equal rights and privileges within such organization * * * to vote in elections or referendums of the labor organization * * * and to participate in the deliberations and voting upon the business of such [Union membership] meetings, subject to reasonable rules and regulations in such organization's constitution and by-laws." Section 101(b) further provides that constitutional or by-law provisions inconsistent with subsection (a) shall be of no force or effect. The purpose of the Act was to assure the "full and active participation by the rank and file in the affairs of the union." *American Federation of Musicians v. Wittstein*, 379 U.S. 171, 182-183; see *Navarro v. Gannon*, 385 F.2d 512, 518 (2d Cir. 1967), certiorari denied, 390 U.S. 989. In view of the fact that "much of the bill was written on the floor of the Senate or House of Representatives" and that the Act contains numerous "calculated ambiguities or political compromises," Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 MICH L. REV. 819, 852 (1960); see S. REP. No. 187, 86th Cong., 1st Sess. (1959), U.S. CODE CONG. & AD. NEWS 2318; H. REP. No. 741, 86th Cong., 1st Sess. (1959), 1959 U.S. CODE

CONG. & AD. NEWS 2424, courts have focused on the broad remedial purposes of the Act rather than on its literal language. See *Knox County Local v. National Rural Letter Carriers' Association*, 720 F.2d 936, 938 (6th Cir. 1984); *Navarro*, 385 F.2d at 518.

When a union provides its membership with the right to vote on a certain matter, the right must be extended on an equal basis and in a meaningful manner, *Christopher v. Safeway Stores, Inc.*, 644 F.2d 467, 470 (5th Cir. 1981); *Alexander v. International Union of Operating Engineers*, 624 F.2d 1235, 1240 (5th Cir. 1980); *Bunz v. Moving Picture Machine Operators' Protective Union*, 567 F.2d 1117, 1121 (D.C. Cir. 1977).[1] The statute does not permit the voting right, once granted, to be equally denied to all. *Safeway*, 644 F.2d at 470. Nor can disparate treatment of members with respect to voting rights be accomplished by adoption of bylaws or constitutional provisions that condone discrimination. *American Postal Workers Union, etc. v. American Postal Workers Union*,[1] 665 F.2d 1096, 1104 n.18 (D.C. Cir. 1981).

Courts have recognized that facially neutral union rules or practices which nevertheless result in disparate treatment of union members and have a discriminatory effect may violate Title I. See *American Postal*, 665 F.2d at 1103, 1104, 1104 n.17; *Alvey v. General Electric Co.*, 622 F.2d 1279, 1286 (7th Cir. 1980); *Bunz*, 567 F.2d at 1122; *Gurtons v. Arons*, 339 F.2d 371, 374 (2d Cir. 1964). The Supreme Court's holding in *Calhoon v. Harvey* is in no way contrary to such an analysis. In *Calhoon* the Court merely ruled that a union member may not bring a post-election suit challenging an officer election

---

[1] It does not appear that § 101(a)(1) can create a right to vote where no express provision for such vote is provided in the bylaws or constitution of a union. See *American Postal Workers Union, etc. v. American Postal Workers Union*, 665 F.2d 1096, 1101 (D.C. Cir. 1981); *Safeway*, 644 F.2d at 470 n.2; *Alexander*, 624 F.2d at 1230.

under § 101(a)(1), since Title IV of the LMRDA provides the exclusive method by which a union member may challenge officer eligibility requirements for officer elections. 379 U.S. at 140; see *Bunz*, 567 F.2d at 1121 n.31. Although the opinion by Justice Black pointed out the inapplicability of Title I to the situation in *Calhoon*, noting that "complaining union members here have not been discriminated against in any way and have been denied no privilege or right to vote or nominate which the union has granted others" and that "the same qualifications were required equally of all members," 379 U.S. at 134, this language does not limit scrutiny under Title I to cases of facially discriminatory union rules.

The fact that a union rule or practice is discriminatory with respect to voting privileges does not end the inquiry under Title I, for the statute expressly sanctions rules and regulations in an organization's constitution or bylaws that are reasonable and the Supreme Court has recently clarified that reasonableness is the ultimate inquiry in this area. See *United Steelworkers of America v. Sadlowski*, 457 U.S. 102, 111. In determining the reasonableness of a union rule, this Court in *Alvey v. General Electric Co.* applied the test of reasonableness employed by the Supreme Court in Title IV cases because the rules challenged in *Alvey* were "applied to bar a group of members from voting" and this Court could "see no principled reason why that test should not also guide our inquiry in this [Title I] case." 622 F.2d at 1285. Consequently the *Alvey* court scrutinized for reasonableness in terms of "a balance between the 'anti-democratic effects' of the challenged rule and the '[union] interests urged in its support.'" 622 F.2d at 1284 (quoting *United Steelworkers of America v. Usery*, 429 U.S. 305, 310). Reasonableness here must also be interpreted in light of the general policy against judicial interference in the internal affairs of unions. See *Alvey*, 622 F.2d at 1285; *Rota v. Brotherhood of Railway, Airline and S.S. Clerks*,

489 F.2d 998, 1003 (7th Cir. 1973), certiorari denied, 414 U.S. 1144.

This Court cannot agree with the district court's observation that the degree of interference allowed under Title I is less than that allowed under Title IV (district court opinion at 8, R. Item 29). This position is contrary to the holding of *Alvey*, and is not supported by the district court's reliance on *Scofield v. NLRB*, 394 U.S. 423. In *Scofield* the Supreme Court ruled that enforcement of a particular union rule setting a production limit on employees did not constitute an unfair labor practice in violation of Section 8(b)(1) of the National Labor Relations Act. The Court merely noted that the LMRDA does not prohibit a union from adopting and enforcing reasonable rules regarding the responsibility of its members with respect to the labor organization. *Id.* at 429, 429 n.6.

III.

The defendant's policy here is much like the union rule examined in *Alvey, supra.* As the Union points out, Local 710's policy is applied equally in the sense that all union members are equally required to come to Chicago to vote. The same observation can be made with respect to the rule in *Alvey* which permitted only union members who had paid their union dues to vote. There all members were equally required to pay dues to be eligible to vote. See 622 F.2d at 1283. But *Alvey* demonstrated the need to go beyond such a superficial inquiry and considered whether the union rule as applied resulted in disparate treatment. *Id.* at 1283, 1286. There another union rule prohibited laid-off employees from paying dues and this Court noted that "the practical effect" of the facially neutral rule limiting voting privileges to dues paying members was to bar completely a group of workers from voting on an extremely important matter, *viz.*, the order in which laid-off employees would be recalled. 622 F.2d at 1284. Similarly, in this case the facially neutral in-

Chicago voting policy as applied results in a disparate impact on a group of members, substantially impinging on their voting rights because of the great geographical dispersion of Local 710 members.

The "practical effect" or "result," 622 F.2d at 1284, 1285, of application of the Union policy is similar to the imposition of a graduated poll tax upon Union members living outside the Chicago area. The large number of members living more than 150 miles from Chicago are required to absorb significant transportation, lodging, and meal costs, (not to mention the loss of leisure or work time) in order to exercise their right to vote on bylaw amendments. These same costs are not imposed at all or only to a negligible degree upon members living near Chicago. Consequently, defendant's assertion that the Union treats all Local 710 members equally must be rejected. The fact that the Union By-Laws appear to permit this discriminatory treatment is irrelevant to this analysis. See *American Postal*, 665 F.2d at 1104 n.18.

The primary difference between this case and *Alvey* is that the group subject to disparate treatment here is somewhat fluid and not entirely discrete. But the fact that voting rights of those living 150 miles from Chicago are not burdened as heavily as those living, for example, 200 miles from Chicago is not a valid reason for ignoring the discrimination present here.

Having determined that the Union requirement of in-Chicago voting on bylaw amendments is discriminatory, this Court's task is to evaluate the reasonableness of the policy, balancing the "anti-democratic effects" of the policy against the "union interests urged in its support." *Supra* p. 7. Although the application of the Union policy in this case does not involve a complete denial of the right to vote and participate in union affairs as was the case in *Alvey*, the in-Chicago voting requirement does impose a very substantial burden on the right to vote of

a very significant percentage of the Local 710 membership. The affidavits submitted by plaintiffs testify to the impact of the policy on the members living significant distances from Chicago (Pltf. Br. 12-13). Many (and plaintiffs assert most) of Local 710's membership are not long-distance drivers but are dock-hands, deliverymen and warehouse workers; thus the above-noted burdens are not minimized by the nature of the work performed by these union members.

A complete denial of the right to vote is not necessary to invoke the protection of Section 101(a)(1). See *supra* p. 5. In *Bunz, supra*, for example, a violation of Section 101(a)(1) was found where the union issued a frivolous post-election constitutional interpretation which increased from thirty-four to fifty-one the percentage of votes necessary to defeat a proposed punitive assessment on members not walking the picket line. 567 F.2d at 1122. Since the "effectiveness" of a minority of union members' votes was diminished, the D.C. Circuit held that the equal right to vote had been denied. *Id.*

The anti-democratic effects flowing from the rule are illustrated by a simple analysis of the circumstances giving rise to this action. On April 24, 1983, a vote was held at the Local 710 membership meeting in Chicago with respect to a proposed amendment to the Union's By-Laws that would require elected union stewards. Less than 500 members attended the membership meeting, representing less than five percent of the Union membership (Pltf. Br. 12). In the 1982 election for Union officers, by defendant's own account, 1,400 Union members living 50 or more miles from Chicago requested a mail ballot and over 800 returned the ballots (Def. Br. 16). Although the Union decries the return rate of approximately fifty-seven percent, the 1983 amendment vote would have been significantly affected by the participation of even a fraction of the 800 members who returned ballots by mail in the officer election.

It cannot be denied that these union members have a significant interest in amending the bylaws of their local. See *American Postal*, 665 F.2d at 1104; *Alvey*, 622 F.2d at 1287. Here the Local 710's policy regulates the Union's voting procedures themselves with respect to all potential bylaw amendments and is not limited to one specific issue as are many of the cases finding a Section 101(a)(1) violation. See *e.g.*, *American Postal*, 665 F.2d at 1103-1104. In summary, the anti-democratic effects of the in-Chicago voting rule must be counterbalanced by some important union purpose to be viewed as reasonable.

On appeal and in its response to plaintiffs' motion for summary judgment below, defendant offered only two justifications for the Union policy. The first justification is that of cost; the Union explains that the 1982 officer election procedures, which permitted members living more than 50 miles from Chicago to request a mail ballot and which resulted in 1,400 requests for ballots, cost the Union a total of approximately $1,500 (including printing, envelopes and mailing) (Def. Br. 16; R. Item 25 at 5). Although the administrative burden of providing procedures to guarantee equality of voting certainly is a relevant consideration in this context, Congress must have recognized that increased union member participation would entail some cost. The figure suggested by Local 710 hardly indicates that mail balloting would impose an overwhelming burden on the Union nor does defendant's argument even address any cost burden created by regional meetings.

Second, defendant suggests that a mail balloting system could create an onerous responsibility because a vote on a proposed bylaw amendment can be obtained under Article 33 of the Union By-Laws by the petitioning of only ten members (R. Item 25 at 6; Def. Br. 16). But this argument is quite speculative in view of the fact that the 1983 vote on the proposed bylaw considering the

election of stewards was evidently the only such vote to occur over the last six years (Def. Br. 21). Moreover, any argument that the Union's own bylaws prevent it from providing equal voting rights runs contrary to the rule stated previously that Section 101(a)(1) violations are not rendered permissible by the mere fact that they are condoned or sanctioned by a union constitution or bylaws. See *supra* p. 6. A union rule limiting consideration of bylaw amendments to one meeting per year (a procedure that plaintiffs assert many other Teamster locals already employ; Pltf. Br. 21) or similar restrictions would not run contrary to the requirements of the LMRDA. But such limitations would not need to be included in any relief granted by the district court.

Defendant also suggests that the in-Chicago voting policy requiring personal attendance forwards the free-flow of ideas by providing a central location to discuss union business (Def. Br. 10). Although the Union certainly has a legitimate interest in promoting face-to-face discussion of issues via an in-person, central location voting requirement, this interest is equally promoted by regional meetings. Additionally, this interest in forwarding the exchange of ideas begins to lose its legitimacy when, as here, the right to vote itself is significantly burdened by the in-person, single-location voting requirement. In summary, defendant's proposed justifications for the in-Chicago voting requirement are simply not persuasive.

The conclusion that the policy at issue is unreasonable is buttressed by consideration of standards developed under Title IV regulating officer elections. As noted previously, *supra* p. 7, Title IV considerations are relevant to this inquiry. Defendant's policy would not appear to survive application of the standard developed by courts for determining when multiple polling places or mail balloting are necessary for officer elections. This standard requires consideration of the following four criteria:

(a) the number of members remotely situated;

(b) the geographic areas covered by the Local;

(c) whether members voluntarily assume the risk by locating outside the local's jurisdiction; and

(d) whether the local uses alternative voting procedures for other important union referenda or elections.

See *Donovan v. International Association of Machinists and Aerospace Workers*, 666 F.2d 883 (5th Cir. 1982); *Donovan v. United Association of Journeymen & Apprentices of Plumbing & Pipefitting Industry*, 112 L.R.R.M. 3357 (S.D. Fla. 1982); 29 C.F.R. § 452.94. The sizeable geographic area covered by Local 710 and the large number of members dispersed throughout the Local have been discussed above.[2] See *supra* p. 4. Members living outside the Local's jurisdiction are not at issue in this case, and Local 710 itself has used mail balloting for officer elec-

---

[2] The district court cases cited by defendant which held reasonable a single location in-person voting requirement for officer elections did not involve the great degree of geographic dispersion of union members present in the instant case. See *Hodgson v. Plumbers Local Union 582*, 350 F.Supp. 16, 17, 20 (C.D. Cal. 1972) (approximately five percent of members voluntarily chose to live more than 100 miles outside the union's jurisdiction); *Hodgson v. Industrial & Allied Workers & Helpers*, 327 F.Supp. 1284, 1287 (E.D. Tex. 1971) (plaintiff only submitted testimony of "several" members who lived greater than 140 miles from the polling place); *Wirtz v. International Hod Carriers'*, 246 F.Supp. 741, 753 (D. Nev. 1965) (eleven and one-half percent of members lived greater than eighty miles from the polling place); *Donovan v. United Association of Journeymen & Apprentices of Plumbing & Pipefitting Industry*, 112 L.R.R.M. 3357 (S.D. Fla. 1982) (four percent of the eligible union members lived more than 110 miles from polling place). Contrast *Donovan v. International Assoication of Machinists and Aerospace Workers*, 666 F.2d 883 (5th Cir. 1982) (cause remanded to consider justifications for union rule that prevented over one-third of membership from participating in nomination process because of members' distance from polling place).

tions as recently as 1982 (Def. Br. 16). Finally, defendant admits that Local 710 has held regional membership meetings in the past in order to accommodate its geographically dispersed members (R. Item 25 at 4).

The determination that the policy in question is unreasonable is also supported by the fact that other Teamster local unions with smaller jurisdictions than Local 710's provide mail ballots or regional meetings for votes on union bylaw amendments proposals (R. Item 19 at 3-4). Consequently, it is this Court's conclusion that the Union's in-Chicago personal voting requirement is an unreasonable denial of the equal voting rights of Local 710 members and constitutes a violation of Title I, Section 101(a)(1) of the LMRDA.[3] Since plaintiffs challenge only the Union's voting procedures and not a particular vote on a substantive issue, see *supra* p. 10, our ruling does not contravene the general policy against judicial interference in the internal affairs of unions. See *supra* pp. 7-8.

IV.

The judgment of the district court is reversed and remanded with instructions to grant the plaintiffs' motion for summary judgment and fashion appropriate relief consistent with this opinion pursuant to the plenary discretion granted in Section 102 of the LMRDA, 29 U.S.C. § 412. See *Hall v. Cole*, 412 U.S. 1, 10-11; *Knox County Local*, 720 F.2d at 938-939.

A true Copy:
Teste:

.....
Clerk of the United States Court of Appeals for the Seventh Circuit

---

[3] In view of our holding with respect to Section 101(a)(1), it is unnecessary to consider whether the policy at issue also violates the rights of free speech and assembly guaranteed by Section 101(a)(2) of the LMRDA.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

November 5, 1985

Before

HON. WALTER J. CUMMINGS, *Chief Judge*

HON. HARLINGTON WOOD, JR., *Circuit Judge*

HON. INZER B. WYATT, *Senior District Judge* *

No. 84-2723

ROBERT J. MCGINNIS, *et al.*,
Plaintiffs-Appellants,

vs.

LOCAL UNION 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, a labor organization,
Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division

No. 83-C-8623—John A. Nordberg, Judge

---

* The Honorable Inzer B. Wyatt, Senior District Judge of the Southern District of New York, is sitting by designation.

ORDER

On consideration of the petition for rehearing with suggestion for reconsideration *en banc* filed on October 21, 1985, by defendant-appellee, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 83 C 8623

Judge John A. Nordberg

ROBERT J. MCGINNIS, JOSEPH KOUBA,
P. JAMES WARDELL, JACKIE PRESSLEY,
Plaintiffs,

v.

LOCAL UNION 710, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, a labor organization,
Defendant.

MEMORANDUM OPINION AND ORDER

This matter is before the Court on defendant's motion to dismiss and plaintiffs' cross motion for summary judgment which have been fully briefed. For the reasons hereinafter stated, defendant's motion to dismiss, which this Court treats as a motion for summary judgment, is granted and plaintiffs' motion for summary judgment is denied.

Facts

The plaintiffs are four members of Local Union No. 710 of the International Brotherhood of Teamsters ("Local 710" or "Union"). Defendant is Local 710. Many of Local 710's members reside in and around Chicago. Other members, however, reside throughout Illinois and even in other states, away from the Chicago area. Plaintiffs are Local 710 members who live and work in downstate Illinois. This lawsuit is the culmination of

plaintiffs' unsuccessful attempts to have the Local's by-laws amended to provide for regional meetings or mail ballots as a method of electing union stewards. Plaintiffs and other union members residing outside of the Chicago area have been engaged in a dispute with Local 710 leadership since early 1983 over the method of electing union stewards. (See affidavits of James Wardell, Dan Dresky, Kenneth Puff, Joseph Kouba and Exhibit A thereto.) Plaintiffs and their supporters desire the direct election of stewards by union members instead of current practice under which the Secretary-Treasurer of the Local appoints stewards.

The plaintiffs complain that the Union violates their rights under Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. §§ 401-531 (1975), by requiring union members to attend Chicago meetings, in person, in order to vote for by-law changes governing the election of stewards. Specifically, plaintiffs claim that the union's current by-law amendment procedures violates §§ 411(a)(1) and 411(a)(2).

Section 411(a)(1) guarantees equal voting rights for union members. It provides:

> Bill of rights; constitution and bylaws of labor organizations
>
> (a)(1) Equal rights.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

Section 411(a)(2) guarantees union members the right to meet and freely express views upon union matters, including voting matters. It provides:

> (2) Freedom of speech and assembly.—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

Section 412 grants district courts jurisdiction where a violation of §§ 411(a)(1) or 411(a)(2) has occurred.

Since plaintiffs live and work more than 50 miles from Chicago, they contend that it is extremely burdensome and inconvenient to require them to attend Chicago meetings in order to vote for by-law changes governing the election of stewards. The burden and inconvenience of traveling to Chicago, plaintiffs argue, effectively denies them their rights under §§ 411(a)(1) and 411(a)(2), thus granting this Court jurisdiction over this dispute under § 412.

Federal Court Jurisdiction Under 29 U.S.C. § 412 (LMRDA)

In ruling upon pending motions of the plaintiffs and Local 710, this Court has looked to the Constitution and By-Laws of Local 710 (Exhibit B to Plaintiffs' Complaint ("Union Constitution"). Since the Union Constitution has been considered by the Court, defendant's motion to dismiss will be treated as a motion for summary judgment in accordance with Fed.R.Civ.P. 12(b)(6). 5 C.

Wright & A. Miller, Federal Practice and Procedure § 1366 (1969 & Supp. 1984).

A motion for summary judgment lies only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 10A C. Wright, A. Miller & M. Kane, Federal Practice and Procedure § 2724 (1983). Applying this standard to the instant case, under well-established labor law principles, plaintiffs cannot prevail. The matter which plaintiffs complain of is an internal union matter which this Court has no jurisdiction to adjudicate under § 412 of the LMRDA.

In *Calhoon v. Harvey*, 379 U.S. 134 (1964), the Supreme Court definitively established that all § 411(a)(1) requires is that union members and classes of union members are not discriminated against in their right to vote. In *Calhoon* three union members sued various officers of their union, alleging that certain provisions of the union's by-laws and the national constitution which governed eligibility for union office infringed upon the union members' right to vote guaranteed by § 411(a)(1).

The by-laws complained of deprived a member of the right to nominate anyone for office but himself. The national constitution provided that no member could be eligible for nomination or election to a full-time elective office unless he had been a union member for five years and had served 180 days or more of seatime in each of two of the preceding three years on vessels covered by collective bargaining agreements with the national union or its subsidiary bodies. Some union members argued that these rules emptied of all meaning the equal right to nominate.

The Court rejected the union members' argument. Instead, the Court interpreted § 411(a)(1) to mean that union rules and eligibility requirements for holding office and nominating candidates must be applied uniformly to all members. Since the rules at issue had not been applied

in a discriminatory manner, the Court found that a violation of § 411(a)(1) had not been stated. *See also Alexander v. International Union of Operating Engineers*, 624 F.2d 1235, 1239-40 (5th Cir. 1980); *Gurton v. Arons*, 339 F.2d 371, 374 (2d Cir. 1964).

As the plaintiffs in *Calhoon*, the plaintiffs in the instant case allege that the union's by-laws and national constitution, in effect, deny them the equal right to vote guaranteed by § 411(a)(1). Plaintiffs do not, however, allege that the disputed rules are being applied in a discriminatory fashion as required by *Calhoon*. Plaintiffs have thus failed to allege a claim under § 411(a)(1). Therefore, this Court lacks jurisdiction to adjudicate their claim under § 412 and accordingly it must be dismissed.

Turning to plaintiffs' claim under § 411(a)(2), cases following *Calhoun* have applied its rationale in consistent fashion, and extended it to encompass claims under § 411(a)(2) of the LMRA, guaranteeing union members the right to freedom of expression. In *Lux v. Blackman*, 546 F.2d 713 (7th Cir. 1976), for example, plaintiff union members opposed a union constitutional provision which prohibited a union member from serving as an officer of the union if the union member had been a member of the Communist party within the preceding five years. Plaintiffs were removed from office when the union learned of plaintiffs' prior affiliation with the Communist party. Plaintiffs argued that the union's action violated their right to freedom of expression under § 411(a)(2). The Seventh Circuit found that plaintiffs' claim was, in fact, a challenge to internal union rules governing eligibility for union office, and therefore did not state a violation of § 411(a)(2). Plaintiffs' cause of action, if any, the court found, was under Title IV, which governs the election of union officers, not Title I which guarantees equal voting rights and freedom of expression. Thus, under the rationale of *Lux*, plaintiffs claimed violation of § 411(a)(2) must also be dismissed.

In the same vein, the cases cited by plaintiff finding federal jurisdiction under § 412 are unlike the instant case and therefore unpersuasive and inapplicable to the facts at hand. In *Bunz v. Moving Picture Machine Operators' Protective Union Local 224*, 567 F.2d 1117 (D.C. Cir. 1977), for example, the court found that § 411(a)(1) was violated when the union refused to follow a validly adopted by-law in conducting a referendum. The court based its decision upon cases where similar voting irregularities had occurred. Likewise, in *Christopher v. Safeway Stores, Inc.*, 644 F.2d 467 (5th Cir. 1981), the court found that jurisdiction was proper by reason of a violation of § 411(a)(1) because the union had failed to follow the local's constitution requiring submission of a proposal to change the format of the union's seniority system to a vote of union members. *Id.* at 470. *See also Trail v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 542 F.2d 961 (6th Cir. 1976) (insufficient facts to determine whether failure to submit collective bargaining agreement rider to membership violated § 411(a)(1), with court noting that constitution of the union not even in evidence. *Id.* at 966.

In the instant case, however, there is no claim that properly adopted union by-laws or constitutional rules were not followed. The by-law relevant to plaintiffs' claim states, in pertinent part:

> The Executive Board is authorized to permit membership meetings to be held on a division, craft, place of employment or other similar basis as it shall consider appropriate considering the special needs of the organization so as to permit the membership to attend meetings and to express their views and otherwise exercise their rights as members.

Article 18 of Local 710's Constitution and By-Laws (Exhibit B to Plaintiffs' Complaint 2). Although the by-law

permits regional membership meetings, the by-law does not require such meetings. The by-laws further provide that:

> Stewards are not officers or agents of the Local Union. They shall be selected and removed by the Secretary-Treasurer upon recommendation of the Business Agents, and shall have such duties as the Executive Board or the Secretary-Treasurer may assign to them from time to time, but their duties shall not include the collection of dues or initation [sic] fees.

Id. at Article 20. Thus, the current practice under which the Secretary-Treasurer appoints stewards is specifically authorized. The procedure for amending this by-law governing the selection of stewards is also specified:

> Any 10 members may propose in writing amendments to these By-Laws. The proposed amendments, unless otherwise provided herein, shall be sumitted [sic] to the Local Union and read at one regular meeting and voted upon at the next regular meeting. Amendments may also be proposed, read and voted upon at a special meeting called for such purpose with advance notice to the membership of the nature of the amendment. Amendments approved by a two-thirds (⅔) vote of these members present and voting shall be sent to the Office of the General President for approval and shall take effect immediately upon receipt by the Local Union of such approval.

Id. at Article 33. Plaintiffs do not claim that these union rules were not followed; rather plaintiffs claim that these procedures place substantial union power in the hands of those who plaintiffs cannot effectively influence. Such a claim does not state a violation of §§ 411(a)(1) or 411(a)(2).

In addition, the plaintiffs contend that the Seventh Circuit case of *Alvey v. General Electric Co.*, 622 F.2d 1279

(7th Cir. 1980), requires this Court to examine the reasonableness of the by-laws or constitutional provision complained of. The plaintiffs then submit data regarding the geographical location of various union members and argue that such data supports the conclusion that the in-person, Chicago voting requirement for changing union by-laws is unreasonable and requires summary judgment for plaintiffs.

Plaintiffs' reliance on *Alvey* is misplaced. In *Alvey*, unlike the instant case, certain union members were denied the right to vote. Under the International's constitution only members in "good standing" were allowed to participate in union affairs and thus vote in adopting procedures for the recall of laid-off workers. A member remained in "good standing" under the constitution "only for the dues period for which dues were required and paid." *Id.* at 1283. Laid-off members were not required to and could not even voluntarily pay dues to remain in "good standing." Thus, laid-off members were effectively prevented from voting upon procedures that would govern their recall to the job. The court found that the good standing provision, as applied to preclude laid-off members from voting on matters affecting their recall rights, was unreasonable and therefore of no force and effect under § 411(a)(1)(a). *Id.* at 1287.

The *Alvey* court was careful to note, however, that its decision did not mark a departure from the policy against judicial interference in the internal affairs of unions. *Id.* at 1285. The court, in fact, stated:

> We reach the more limited issue: the reasonableness of the good standing provision to *preclude* laid-off employees from voting on the alteration of their recall rights. (emphasis in original)
>
> * * * *
>
> Therefore, we approach our resolution fully conscious of, and with respect for, the interests that underlie

> that policy [of judicial non-interference in internal union affairs]. Generally, internal union matters should be left to the union.

Id. at 1285. Thus, *Alvey*, like the other cases cited by plaintiffs, is limited to situations where union members are prevented from voting in union elections and referendums or from fully participating in the process of nominating candidates to run for union office. *See Donovan v. District Lodge No. 100, International Association of Machinists and Aerospace Workers, AFL-CIO*, 666 F.2d 883 (5th Cir. 1982).

Moreover, although provisions of the LMRDA at issue here do allow some interference in internal union affairs, there is a difference in the degree of interference allowed under Title I, at issue here, and Title IV, which governs the election of union officers. *See Scofield v. N.L.R.B.*, 394 U.S. 421 (1969). In *Scofield* the court noted that although the LMRDA dealt with the internal affairs of unions, the statute did not impair the right of a union to prescribe its own internal rules. In *Scofield* a union rule set a production limit upon piecework employees. Although the employer paid union members for work done over the production limit, a union rule imposed fines and even expulsion upon members who exceeded certain production requirements. The union members argued that the union rule violated their rights to engage in protected activity.

The court disagreed, finding that the LMRDA did not overturn or modify a union's right to prescribe its own internal rules. *Id.* at 429 & n.6. Rather, the court noted that, if a union member desires to change an internal union rule, he or she may seek to change the rule, and failing at that, may leave the union and still obtain whatever benefits flow from the rule. *Id.* at 1161. Plaintiffs in the instant case may similarly avail themselves of the options suggested in *Scofield.*

Conclusion

Therefore, for the reasons stated in the foregoing opinion, plaintiffs' motion for summary judgment is denied and defendant's motion to dismiss, which this Court treats as a motion for summary judgment, is granted.

ENTER:

/s/ John A. Nordberg
JOHN A. NORDBERG
United States District Judge

Dated: September 26, 1984

Supreme Court, U...
FILE
MAR 25 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. 85-1408

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

LOCAL 710, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,

Petitioner,

v.

ROBERT J. McGINNIS, et al.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Leon M. Despres
Thomas H. Geoghegan
Laurence Engelstein
DESPRES, SCHWARTZ & GEOGHEGAN
77 W. Washington Street-1411
Chicago, Illinois 60602-2985
(312) 372-2511
Attorneys for Respondents

26pp

TABLE OF CONTENTS

	Page
Table of Authorities.....	ii
Counterstatement of the Case..	1
Summary of Argument.....	5
Reasons for Denying Petition for Writ.....	6
Conclusion.....	20

TABLE OF AUTHORITIES

Cases	Pages
Alexander v. Intern. Operating En., AFL-CIO 624 F.2d 1235 (CA 5 1980).....	13
Blanchard v. Johnson 532 F.2d 1074 (CA 6), cert. denied, 429 U.S. 869 (1976).....	9
Bunz v. Moving Picture Mach. Operators' Union 567 F.2d 1117 (DC Cir. 1977)...	8,11
Calhoon v. Harvey 379 U.S. 134 (1964).....	10,11
Christopher v. Safeway Stores, Inc. 644 F.2d 470 (CA 5 1981).....	9
Denov v. Chicago Federation of Musicians Local 10-208 703 F.2d 1034 (CA 7 19830.	12
Gurton v. Arons 339 F.2d 371 (CA 2 1964).....	11,12
Knox County Local v. National Rural Letter Carrier Assn. 720 F.2d 936 (CA 6 1984).....	18,20
Lane v. Wilson 307 U.S. 268 (1939).....	10
Local 82, Furniture Moving Drivers v. Crowley ____U.S.____, 52 L.W. 4757 (June 12, 1984).....	11,15
Molina v. Union de Trabajadores De Muelles 762 F.2d 166 (CA 1 1985).....	14

Nienaber v. Ohio Valley Carpenters Dist. Council
652 F.2d 1284 (CA 6 1981)..... 13

Steelworkers v. Sadlowski
457 U.S. 102 (1982)..... 17,20

Stelling v. Intern. Bro. of Elec. Workers
587 F.2d 1379 (CA 9 1978)..... 14

Trail v. IBT
542 F.2d 961 (CA 6 1976)..... 9

Turner v. Dempster
743 F.2d 1301 (CA 9 1984)..... 19

Statutes and Regulations

Labor Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. §401 et seq

§101(a)(1)..... passim

29 Code of Federal Regulations, section 452.94.... 16

Miscellaneous

Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 (NLRB ed. 1959)..... 19

COUNTERSTATEMENT OF THE CASE

Because, through omission and misstatement, petitioner distorts the record, respondents submit this counterstatement.

Petitioner is a local labor organization, but it has nationwide jurisdiction. Although petitioner admitted below that some 18% of its 15,000 members live and work more than 150 miles from its Chicago meeting hall, respondents estimate that at least 25%, and possibly 40%, of the membership live at least that distance from Chicago. App.4a. Respondents claim, and the Court of Appeals held, that petitioner discriminates against this group of remotely situated members in violation of Title I of the Labor Management Reporting and Disclosure Act (LMRDA) by requiring them to come to Chicago to vote on union referenda and to participate in union meetings.

In late 1982 and early 1983, respondents and other Local 710 members sought to amend the Local's by-laws to provide for the direct election of stewards, rather than their appointment by the Secretary-Treasurer of Local 710, William Joyce. Joyce opposed the amendment.

Because the remotely situated members received inadequate representation from the Chicago-oriented union, they were the most ardent supporters of the amendment. See, e.g., Aff. of Dale Hammer. In early 1983, 433 members residing more than 150 miles from Chicago signed petitions supporting the amendment and requesting that petitioner provide them some feasible means of voting on the amendment. App.4a. Respondents presented these petitions to the union prior to the April 1983 vote on the amendment.

Despite this dramatic demonstration of interest (or perhaps because of it), petitioner ignored the petitions and refused to exercise its power under Article 18 of its by-laws to hold membership meetings on a regional or other basis "so as to permit the membership to attend meetings and to express their views and otherwise exercise their rights as members." App.3a. Most other large Teamster locals accommodate their dispersed members in some fashion. App.14a.

Only some 500 members attended the April 1983 Chicago meeting at which the amendment was considered. Petitioner's exclusion of the geographically remote members was critical to the Joyce group's success in defeating the amendment.

It is undisputed that petitioner's policy of requiring the remote members to travel to Chicago to vote in union referenda

and to participate in union meetings has the effect of disenfranchising those members.

Contrary to petitioner's claim that the Court of Appeals found no discrimination, it held that petitioner's policy subjected the geographically remote members to disparate treatment, and that the "union requirement of in-Chicago voting on by-law amendments is discriminatory." (emphasis supplied). App.9a. The Court properly posed the issue as "whether the union rule as applied resulted in disparate treatment," App.8a., and rejected any "superficial inquiry" which would uphold the union's policy simply because all members were in theory equally required to come to Chicago to vote.

The Court then carefully considered the union interests purportedly advanced by the Chicago-only policy and found the union's rationales "not persuasive." App.12a.

Because the Court held for respondents on their section 101(a)(1) claim, it did not reach their separate claim under section 101(a)(2).

SUMMARY OF THE ARGUMENT

The Court of Appeals holding that petitioner discriminated against its geographically remote members and effectively disfranchised them by requiring only their group, which consists of some 25-40% of the Local Union's membership, to travel some 300 miles to vote in Chicago on union referenda does not conflict with any decisions of this Court or of any Court of Appeals. The Court of Appeals considered the purported justification for petitioner's exclusionary practice, taking proper notice of the general policy against judicial interference in unions' internal affairs, and correctly found those justifications not persuasive.

REASONS FOR DENYING PETITION

1. The Court of Appeals correctly held that petitioner discriminated against its geographically remote members in violation of Title I by requiring only that group to travel some 300 miles to vote in Chicago on union referenda while not imposing any such hardships on its Chicago members who are generally more supportive of petitioner's incumbent leadership.

Contrary to what petitioner asserts, Local 710 discriminates against a de facto class of its members -- those remotely situated from the union hall in Chicago -- by its policy of permitting only in-Chicago voting on union referenda. Because this policy effectively precludes some 25% to 40% of petitioner's membership from voting, respondents consistently asserted in the courts below that petitioner's policy discriminates, on its face and in its application, against the remote members.

Petitioner misrepresents when it states to the contrary.

Petitioner's semantic manipulations should not deflect this Court's attention from the lucid analysis of the Court of Appeals of the union's discriminatory treatment of this substantial, albeit fluid, group of members. As the Court of Appeals recognized, the union's policy does not treat all its members equally. The remote members cannot feasibly attend the Chicago meetings; the Chicago members can do so without any material hardship. By refusing to hold regional meetings or otherwise accommodate the remote members, petitioner favors its Chicago members, who are disproportionately supportive of petitioner's incumbent leadership. By refusing to exercise its discretion under its by-laws to permit active participation by the remote members, petitioner intentionally

limits effective participation to Chicago area members.

For petitioner to suggest that this rule is "neutral" because evenly applied is an empty verbalism. The courts long ago rejected such semantic sophistry recognizing that Title I guarantees a meaningful or effective right to vote and not just "the mere naked right to cast a ballot." Bunz v. Moving Picture Mach. Operators' Union, 567 F.2d 1117, 1121 (DC Cir. 1977)(collecting cases).

Although the decision below is apparently the first to apply well-settled Title I principles to this relatively unusual factual setting,*1 its holding comfortably

*1 Petitioner's blanket assertion that the decision below "jeopardizes" the rules of other local unions is not supported in the record. In fact, the uncontradicted record evidence suggests that petitioner's exclusionary policy is rare in locals of its size and character. App.14a.

conforms with precedent. In a variety of contexts, courts have struck down union practices which empty the right to vote of meaning, even where the challenged union practice is facially neutral and does not in terms discriminate against classes of members. See, e.g., Blanchard v. Johnson, 532 F.2d 1074 (CA 6), cert. denied, 429 U.S. 869 (1976)(union violates section 101(a)(1) by denying all its members adequate information about affiliation proposal on ballot); Christopher v. Safeway Stores, Inc., 644 F.2d 470 (CA 5 1981) (section 101(a)(1) violated even where union denies all members right to vote); accord, Trail v. IBT, 542 F.2d 961 (CA 6 1976). As discussed above, however, petitioner's policy is even more pernicious in that it burdens the right to

vote for only a discrete group of its membership.*2

Calhoon v. Harvey, 379 U.S. 134 (1964) is not to the contrary. Unlike in Calhoon, petitioner's policy restricts a class of members from the activity of voting itself by precluding access to the place of voting and does not implicate Title IV. Moreover, in Calhoon this Court did not consider whether the union rule was discriminatory in effect;

---

*2 Contrary to petitioner's claim, this Court, and presumably Congress in enacting the LMRDA, was fully cognizant that rules which appear to treat all potential voters equally could be used to disenfranchise discrete groups within the electorate, such as Blacks. See, e.g., Lane v. Wilson, 307 U.S. 268, 275 (1939)(the Fifteenth Amendment "nullifies sophisticated as well as simple-minded modes of discrimination. It hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestrained as to race.")

the "complaining members have not been discriminated against in any way." (emphasis supplied). Id. at 139. Because in Calhoon "in substance the claims alleged violations of Title IV rather than Title I," Local 82, Furniture Moving Drivers v. Crowley, ___U.S.___, 52 L.W. 4757 (June 12, 1984), its holding is of limited relevance to pure Title I cases. See, e.g., Turner v. Dempster, 743 F.2d 1301, 1302 (CA 9 1984); Bunz, supra, at n.31.

The Court of Appeals decision does not conflict with Gurton v. Arons, 339 F.2d 371 (CA 2 1964), or the "weighted voting" cases. In Gurton, the union struck down a new by-law amendment which permitted members to vote only in person at union meetings, the policy which petitioner asserts is reasonable.

The Second Circuit after carefully noting that the amendment, although facially

neutral, was "designed to disenfranchise a large majority of the union's members and...would have had that effect" (emphasis supplied), upheld the union's action as reasonable. Because the union action upheld in Gurton broadened its members' ability to participate effectively in union affairs, Gurton offers no support to petitioner's conscious policy of disfranchisement.

Because section 101(a)(1) does not apply to delegate representation, Denov v. Chicago Federation of Musicians Local 10-208, 703 F.2d 1034, 1039 (CA 7 1983), the weighted voting decisions need not address the discrimination issue, and have only considered the "reasonableness" of union delegate rules at issue. Id. The courts have upheld convention representation systems as reasonable if "some meaningful representation is achieved," Id. at 1041, a standard which

petitioner's exclusionary policy cannot satisfy.

Nor do the other decisions cited by petitioner support its argument that Title I sanctions the effective disfranchisement of substantial portions of a union's membership. Unlike in Alexander v. Intern. Operating En., AFL-CIO, 624 F.2d 1235, 1240 (CA 5 1980), where the court noted that "plaintiffs themselves were not singled out for disparate treatment, nor is there any hint that other union members received better treatment in exercising their union franchise," petitioner's geographically remote members were singled out for inferior treatment. In Nienaber v. Ohio Valley Carpenters Dist. Council, 652 F.2d 1284 (CA 6 1981), the court held that the union's ratification by mail ballot of new by-laws, even though not the ratification procedure provided for in the

existing by-laws, did not violate Title I. All union members were equally affected by the union's deviation from its specified procedures and none were disenfranchised by the mail ballot procedure. Finally, in Stelling v. Intern. Bro. of Elec. Workers, 587 F.2d 1379 (CA 9 1978), where all union members were equally denied the right to vote on ratifying a collective bargaining agreement, no claim was raised that the union's denial adversely affected any particular segment of the union membership. In none of these cases was a discrete segment of the union's membership denied meaningful voting rights granted to any other segment.*3

---

*3 In Molina v. Union de Trabajadores De Muelles, 762 F.2d 166 (CA 1 1985), the court held any Title I claim precluded by Title IV.

Petitioner's reliance on Title I's notoriously opaque legislative history is equally unpersuasive. Crowley, supra, at n.17. Although Senator McClellan intended Title I to prohibit union rules creating de jure classes with unequal voting rights, the legislative history does not suggest that he sanctioned practices such as that challenged in this case which are equally effective in disfranchising union members and discouraging rank and file participation.

Petitioner's inferences from Senator McClellan's proposals that union meetings be held regularly and that union officers be elected at a general membership meeting are unfounded. Both proposals were rejected. More importantly, their purpose was to expand membership participation, a goal which petitioner's rule undermines. Title IV, as enacted, recognized that providing all members

"a reasonable opportunity" to vote for union officers is a more flexible method to ensure full membership participation, and the Secretary of Labor has determined that to effectuate that purpose may "require establishing multiple polling places or the use of a mail ballot referendum when the members are widely dispersed." 29 C.F.R. §452.94. These shreds of legislative commentary on rejected precursors to section 101(a)(1), which are at best tangential to the issue presented in this case, are entitled to minimal weight, especially when they are advanced in support of practices which conflict with Title I's broad legislative purpose of promoting membership participation in union affairs.

2. The Seventh Circuit's decision does not conflict with Steelworkers v. Sadlowski, 457 U.S. 102 (1982).

The petitioner argues that the Court of Appeals used a balancing test and Sadlowski did not. In fact, the test used in Sadlowski was the same kind of analysis in which the Court engaged in below. We need not even reach the point, however, because Sadlowski involved section 101(a)(2) and this Court's discussion of that section's proviso does not govern the interpretation of the proviso to section 101(a)(1).

In each case, the courts identified the union interests purportedly advanced by the challenged rule and the rule's impact on members' rights protected under Title I. In Sadlowski, this Court found that the union interest, preventing outsider influence, was significant, and that the rule was properly

tailored to achieve its purposes. The Court then found that "as a practical matter the impact may not be substantial" on rights protected by the statute. Id. at 113. In contrast, the Court of Appeals found petitioner's policy had a substantial impact on members' rights and its purported justification was unreasonable. The Court found petitioner's interest in promoting face-to-face discussion legitimate; but it also found petitioner's rule did not advance that interest because the remote members could not attend meetings to engage in face-to-face discussion. The so-called justification for the rule was irrational. App.12a.

The approach by Court of Appeals conforms with that of other post-Sadlowski decisions. Knox County Local v. National Rural Letter Carrer Assn., 720 F.2d 936 (CA 6 1984)("union prohibition of free speech must

not be unreasonable"); Turner v. Dempster, 569 F.S. 683, 690 (ND Cal. 1983), aff'd, 743 F.2d 1301 (CA 9 1984). The petitioner's proposed minimal-rationality test would effectively gut any protections provided by section 101(a)(1) because, much as with equal protection challenges to economic legislation, almost any union rule can be justified as advancing some arguably legitimate purpose or

---

*4 Senator McClellan viewed the provisos to section 101(a)(1) and (2) as placing the same limitations on the affirmative grant of rights as was "implicit in the Bill of Rights of the Federal Constitution to prevent abuses." II Legislative History of the Labor-Management Reporting And Disclosure Act of 1959 (NLRB ed. 1959, page 1294). As such, reasonableness requires more than the mere articulation of some rationale for a union rule which so drastically curtails Title I protected activities.

being related to it. The rights guaranteed by Title I are in the nature of first amendment rights. If those rights are to have any meaning at all, they should not be swallowed by the proviso. Knox County, supra, at 939.*4

Sadlowski suggests that an intermediate standard of scrutiny is appropriate, and the Court of Appeals, under the rubric of its "balancing" test, subjected petitioner's policy to such heightened scrutiny.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

Leon M. Despres
Thomas H. Geoghegan
Laurence Engelstein
DESPRES, SCHWARTZ & GEOGHEGAN
77 W. Washington Street-1411
Chicago, Illinois 60602-2985
(312) 372-2511
Attorneys for Respondents

DISTRIBUTED
APR 7 1986

Supreme Court, U.S.
FILED
APR 7 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1408

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

LOCAL 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
Petitioner,

v.

ROBERT J. MCGINNIS, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

PETITIONER'S REPLY BRIEF

MARVIN GITTLER
ASHER, PAVALON, GITTLER & GREENFIELD, LTD.
Two North LaSalle Street
Suite 1200
Chicago, Illinois 60602
(312) 263-1500

GEORGE KAUFMANN
(Counsel of Record)
DICKSTEIN, SHAPIRO & MORIN
2101 L Street, N.W.
Washington, D.C. 20037
(202) 296-1294

Attorneys for Petitioner

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF CONTENTS

	Page
ARGUMENT	1
CONCLUSION	8

TABLE OF AUTHORITIES

CASES

Alvey v. *General Electric Co.*, 622 F.2d 1279 (7 Cir. 1980)	2
Calhoon v. *Harvey*, 379 U.S. 134 (1964)	5
Gomillion v. *Lightfoot*, 364 U.S. 339 (1960)	4
Guinn v. *United States*, 238 U.S. 347 (1915)	4
Lane v. *Wilson*, 307 U.S. 268 (1939)	3
Molina v. *Union De Trabajadores De Muelles*, 762 F.2d 166 (1 Cir. 1985)	5
Steelworkers v. *Sadlowski*, 457 U.S. 102 (1982)	5, 6, 7
Teamsters v. *United States*, 431 U.S. 324 (1977)	3
Texas Dept. of Community Affairs v. *Burdine*, 450 U.S. 248 (1981)	3

CONSTITUTION AND STATUTES

U.S. Const. Amend. I	7
Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*:	
Title VII	3
Labor Management Reporting and Disclosure Act of 1959, 73 Stat. 519, U.S.C. § 401 *et seq.*	
§ 101(a)(1)	3, 5, 6
§ 101(a)(2)	6, 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-1408

LOCAL 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
Petitioner,

v.

ROBERT J. MCGINNIS, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

PETITIONER'S REPLY BRIEF [1]

ARGUMENT

I

The District Court entered summary judgment for the defendants, and the Court of Appeals, in turn, directed the entry of summary judgment in favor of plaintiffs (respondents here). Thus, the respondents' estimate concerning the percentage of Local 710 members who live more than 150 miles from Chicago (Br. Opp. 1, remarkably increased for their argument to "some 300 miles", *id.* 5, 6) was not treated as fact by the Court of Appeals.

---

[1] "Pet." will refer to the Petition for a Writ of Certiorari herein; "App." will refer to the Appendix thereto; "Br. Opp." will refer to the Brief in Opposition filed by respondents.

Nor did the Court of Appeals adopt respondents' opinion that the Chicago members "are disproportionately supportive of petitioner's incumbent leadership" (*id.* 7), or their speculations concerning the vote on the proposed steward amendment which gave rise to this suit (*id.* 2, 3).[2] Most important, there is no basis in the Court of Appeals' decision for respondents' repeated assertions that the purpose of the union rule at issue here was to disenfranchise its non-Chicago members (*id.* 7-8, 12, 13).[3]

In short, the Court of Appeals decided this case on the basis of the fact, acknowledged by Local 710, that 18% of its members live at least 150 miles from Chicago (App. 4a-5a, 9a), and the Court's view on the law that § 101 (a) (1) of the LMRDA of 1959 forbids facially neutral union rules (*id.* 6a, 8a) which create unequal burdens on members with respect to meeting attendance and voting (*id.* 9a).

Contrary to what respondents say, the court below did not "pose[] the issue as 'whether the union rule as applied resulted in disparate treatment.'" (Br. Opp. 4, quoting App. 8a). In the quoted passage, the Court was describing not this case, but its earlier decision in *Alvey* v. *General Electric Co.*, 622 F.2d 1279 (7 Cir. 1980).[4] The Court went on to say: "Similarly, in this case the facially neutral in Chicago voting policy as applied re-

---

[2] Especially ingenious is respondents' invention of a "Joyce group", (Br. Opp. 3, referring to Local 710's Secretary-Treasurer). They thereby attempt to convey the impression that the case involves a conflict between two classes of members, one supporting incumbent officers and the other opposed to them.

[3] Respondents now so charge although they did not even allege improper motivation in the complaint, let alone establish it by proof.

[4] The sentence from which petitioners quote reads in full: "But *Alvey* demonstrated the need to go beyond such a superficial inquiry and considered whether the union rule as applied resulted in disparate treatment." (App. 8a, citing 622 F.2d at 1283, 1286.)

sults in a *disparate impact* on a group of members, substantially impinging on their voting rights because of the great geographical dispersion of Local 710 members." (App. 8a-9a, emphasis added.) Thus the Court of Appeals, unlike respondents, borrowed accurately from the terminology which has developed in litigation under Title VII of the Civil Rights Act of 1964.[5] But it erred in holding that "disparate treatment" and "disparate impact" are [s]imilar[]" in their legal result under § 101 (a) (1).[6]

The comparison between the LMRDA and the 1964 Civil Rights Act is instructive because the latter was novel in forbidding rules on the basis of their adverse *effects* even though they are neutral on their face. In attempting to avoid the conclusion that the Court's interpretation of § 101(a) (1) is, for this reason, anachronistic (Pet. 12-13), respondents cite no statute, and only a single constitutional law case, *Lane* v. *Wilson*, 307 U.S. 268 (1939). They say: "Contrary to petitioner's claim, this Court, and presumably Congress in enacting the LMRDA, was fully cognizant that rules which appear to treat all potential voters equally could be used to disenfranchise discrete groups within the electorate, such as Blacks." (Br. Opp. 10, n.2) While it is entirely proper to attribute knowledge of such voting rights cases to the members of the 1959 Congress who framed the "equal rights" provision of § 101(a) (1), respondents seriously misread the *Lane* case.

The state statute which was struck down in *Lane* did *not* "appear to treat all potential voters equally". As Justice Frankfurter wrote in *Lane*, the "crux of the present controversy is the validity of [the statute's] registration

---

[5] See, *e.g.*, *Teamsters* v. *United States*, 431 U.S. 324, 335-336, n.15 (1977), and *Texas Dept. of Community Affairs* v. *Burdine*, 450 U.S. 248, 252, n.5 (1981).

[6] See the discussion of *Alvey*, *supra* and like decisions from other courts at Pet. 9, n.3.

scheme, *with its dividing line* between white citizens who had voted under the "grandfather clause" immunity prior to *Guinn* v. *United States*, [238 U.S. 347 (1915)], and citizens who were outside it, and the not more than 12 days as the normal period of registration for the theretofore proscribed class [the black citizens]." (*Id.* at 271, emphasis added).[7]

II

Respondents advert only fleetingly to the importance of the questions presented by the Petition (Br. Opp. 8, n.1). They simply fail to do business with the fundamental point that the Court of Appeals' interpretation invites litigation over almost any union rule which regulates voting, nominations, and attendance or participation at union meetings. By their very operation, such rules create a "*de facto* class of [union] members" (Br. Opp. 6)—namely, those who fail to satisfy the requirements of the rule. Yet, on the Court of Appeals' view, union rules are subject to challenge if any such *de facto* class, or "fluid" group of members (*id.* 7), is more heavily "burdened" (App. 9a) by the rule than are other members.[8]

---

[7] *Guinn* v. *United States*, *supra*, struck down a "literacy test from which white voters were, in effect, relieved through the operation of a 'grandfather clause'" (307 U.S. at 269). The new statute *on its face* preserved the eligibility of those who had been permitted to vote under the invalidated statute (that is, Whites) but required that all others who were then qualified to vote register "between the thirtieth day of April, 1916, and the eleventh day of May, 1916" (*id.* at 270, n.1, quoting the statute). Those who failed to so register, were forever barred from voting.

Moreover, the statute was obviously motivated by a desire to prevent Blacks from voting. This is what was meant by "sophisticated * * * modes of discrimination" (*Id.* at 275). *Cf.* Justice Frankfurter's quotation of the passage in *Gomillion* v. *Lightfoot*, 364 U.S. 339, 342 (1960).

[8] Even on the narrower, less fundamental point of the decision's impact on the ability of unions to provide that important decisions shall be made at meetings of the entire membership (Pet. 11),

III

In our Petition we urge that the decision below is inconsistent with *Calhoon* v. *Harvey*, 379 U.S. 134 (1964) with respect to the first question presented (Pet. 6-8), and with *Steelworkers* v. *Sadlowski*, 457 U.S. 102 (1982) with respect to the second question presented (Pet. 15-18). Respondents' efforts to avoid the precedential force of these decisions are entirely without merit.

A. *Calhoon* cannot be dismissed as being "of limited value to pure Title I cases" (Br. Opp. 11). Part I of the *Calhoon* opinion (379 U.S. at 138-139) is wholly devoted to construing "equal rights" in § 101(a)(1). See especially *id.* at 139, quoted at Pet. 8 and 9.[9] Respondents' further contention, that *Calhoon* "did not consider whether the union rule was discriminatory in effect" (Br. Opp. 10), disregards our showing that with respect to the right to nominate (which is protected by § 101(a)(1)) the union's rule in *Calhoon did* have an unequal, adverse effect on the "complaining members" (*id.* 11) and the others whom the self-nomination rule disqualified from nominating *anyone*, because they were not themselves eligible to be candidates (Pet. 7-8).

---

plaintiffs' response is insubstantial. It is hardly surprising that the "record" does not show that the decision below jeopardizes the rules of other unions (Br. Opp. 8, n.1); the facts concerning the impact of a decision *on parties not before the Court* are rarely part of the evidentiary record because they are not material to the merits. Moreover, the fact that some locals affiliated with the Teamsters International provide for regional meetings or mail ballots (*id.*), does not negate the existence of many other geographically widespread local unions (within or outside the IBT) which have rules like that which is challenged here.

[9] A succinct and accurate description of *Calhoon's* holding was recently given in *Molina* v. *Union De Trabajadores De Muelles*, 762 F.2d 166 (1 Cir. 1985) (cited at Pet. 10, n.4):

> The Court there rejected their [the union members'] claim, noting that the issue of the provisions' validity would not fall

B. Respondents' assertion that because *Sadlowski* involved § 101(a)(2) it does not govern the interpretation of the proviso to § 101(a)(1) (Br. Opp. 17) is not accompanied by any explanation as to why these provisos should be construed differently. They obviously should be treated alike because both protect "reasonable rules", and both came into the Bill at the same time, as part of the Kuchel substitute. See Pet. 16, n.14. The Court below acknowledged that *Sadlowski* is the applicable precedent (App. 7a), but it adopted a balancing test of "reasonableness" rather than the rationality test which was declared in *Sadlowski*, 457 U.S. at 112 and 121.[10]

Respondents also plainly err when they assert that *Sadlowski* employed the "same kind of analysis in which the Court engaged below" (Br. Opp. 17). The sentence from which respondents quote in making this argument (Br. Opp. 18, quoting 457 U.S. at 113), does not appear in Part II B(2) of this Court's opinion wherein the proviso was construed, but in Part II B(1) which considered only

---

under Title I discrimination because *the same qualifications applied to everyone.*" [762 F.2d at 169 emphasis added].

Respondents' comment that in *Molina* "the court held any Title I claim precluded by Title IV" (Br. Opp. 14, n.3) is untenable. While the court suggested that Title IV might be preclusive, it did not rest its decision on that proposition: "We need not face this issue, however, because [plaintiff members] fail to meet what is in reality their first hurdle: stating a Title I claim." (762 F.2d at 168).

Because the very recent decision of the First Circuit in *Molina* is clearly in conflict with the decision below as to the meaning of § 101(a)(1) we will not further lengthen this brief by replying to respondents' efforts to distinguish the conflicting decisions from other circuits cited at Pet. 10 and n.4.

[10] Respondents would sweep all the chessmen from the board by attributing to the Court of Appeals the finding that the union's "justification for the rule was irrational". (Br. Opp. 18) The Court of Appeals nowhere said the rule was "irrational"; it said that the justifications for the rule were "simply not persuasive" under that Court's balancing test. (Ap. 12a)

the question whether the challenged union rule had an adverse impact on interests which Congress sought to protect by § 101(a)(2).

Finally, respondents' analogy to the First Amendment (*id.* 20) was expressly and unambiguously disapproved in *Sadlowski.*[11]

In sum, respondents cannot successfully dispute that as to both questions presented by the Petition the decision below is clearly inconsistent with a decision of this Court.

---

[11] After reciting the legislative history of the LMRDA Bill of Rights, the Court concluded:

> This history reveals that Congress modeled Title I after the Bill of Rights, and that the legislators intended § 101(a)(2) to restate a principal First Amendment value—the right to speak one's mind without fear of reprisal. However, *there is absolutely no indication that Congress intended the scope of § 101(a)(2) to be identical to the scope of the First Amendment. Rather, Congress' decision to include a proviso covering "reasonable" rules refutes that proposition.* First Amendment freedoms may not be infringed absent a compelling governmental interest. Even then, any government regulation must be carefully tailored, so that rights are not needlessly impaired. *Brown* v. *Hartlage*, 456 U.S. 45, 53-54 (1982). Union rules, by contrast, are valid under § 101(a)(2) so long as they are reasonable; they need not pass the stringent tests applied in the First Amendment context. [457 U.S. at 111, emphasis added.]

CONCLUSION

For the foregoing reasons and those stated in the Petition, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

MARVIN GITTLER
ASHER, PAVALON, GITTLER & GREENFIELD, LTD.
Two North LaSalle Street
Suite 1200
Chicago, Illinois 60602
(312) 263-1500

GEORGE KAUFMANN
(Counsel of Record)
DICKSTEIN, SHAPIRO & MORIN
2101 L Street, N.W.
Washington, D.C. 20037
(202) 296-1294

Attorneys for Petitioner